REMARKS

The Office Action mailed November 2, 2011, has been reviewed and these remarks are responsive thereto. Claims 1, 3-10, 31, and 33-40 were presented for examination.

Claim Objections

The Office Action objects to claim 1 because of an incorrect claim status identifier. Claim 1 has been amended to overcome the objection. Accordingly, Applicants respectfully request the withdrawal of the objection to claim 1.

Claim Rejections Under 35 U.S.C. § 103(a)

A.   Response to Examiner's Arguments

The Examiner concedes that neither Iliff nor Ohayon disclose that "when the answer satisfies the condition, search[ing] a datastore accessible by the remote computer for textual phrases that match the question and automatically generate a clinical note containing the textual phrases for review by the health care professional." *See* Office Action, page 3. However, Applicants respectfully assert that the Examiner has not identified a disclosure of this limitation in Brown. Because at least this limitation is not present in either Iliff, Ohayon, or Brown, a prima facie case of obviousness has not been made by the Examiner.

The Examiner cites several portions of Brown, but none of the portions disclose the limitation recited in Applicants' claim 1 ("when the answer satisfies the condition, search a datastore accessible by the remote computer for textual phrases that match the question and automatically generate a clinical note containing the textual phrases for review by the health care professional"). In particular, the Examiner cites, paragraphs 41, 44, 105, 115, and page 61 of Appendix D of Brown. *See* Office Action, page 4. Applicants address each cited portion of Brown below.

- Paragraph 41 discloses a "script generator for generating script programs" and "a database connected to the script generator for storing the script program and the responses to the queries." *See* Brown, paragraph 41. However, paragraph 41

does not disclose searching a datastore for textual phrases that match the question
and generating a clinical note.

- Paragraph 44 discloses that a report is generated including "measurements and
  responses" from the patient. *See* Brown, paragraph 44. However, paragraph 44
  does not disclose that the report includes any textual phrases, let alone that the
  textual phrases were obtained by searching a datastore using the questions
  presented to the patient.

- Paragraph 105 discloses that the report "includes a graph 116 of device
  measurements 44 received from the patient, as well as a listing of responses 42
  received from the patient." See Brown, paragraph 105. However, neither the
  listing of responses nor the graph of received measurements is a "textual phrase"
  obtained by searching a datastore using the questions presented to the patient.

- Paragraph 115 discloses that the report "includes device measurements 44 and
  query responses 42 last received from the patient." *See* Brown, paragraph 115.
  As discussed with paragraph 105, neither the listing of responses nor the graph of
  received measurements is a "textual phrase" obtained by searching a datastore
  using the questions presented to the patient.

- Page 61 of Appendix D shows only a set of questions and the patient's response
  to those questions and graphs illustrating the received data. *See* Brown, page 61
  of Appendix D. As discussed with paragraph 105, neither the listing of responses
  nor the graph of received measurements is a "textual phrase" obtained by
  searching a datastore using the questions presented to the patient.

The Examiner further argues that "[t]he text may be customized per the script so the
physician may input any type of phrase or text." *See* Office Action, page 4. The Examiner cites
no portion of Brown as disclosing this. However, even if Brown did disclose that the physician
may input any phrase or text, this is not the limitation recited by Applicants' claim 1.

15

Applicants' claim 1 instead recites that the method includes "when the answer satisfies the condition, search[ing] a datastore accessible by the remote computer for textual phrases that match the question and automatically generate a clinical note containing the textual phrases for review by the health care professional." A physician entering a phrase is different from searching a datastore and obtaining a textual phrase matching the questions presented to the patient.

The Examiner rebuts that Brown inherently discloses that "a database was searched [for] phrases related to a patient's response" as illustrated by page 27 in Appendix D of Brown. *See* Office Action, page 13. Page 27 illustrates a database of questions and responses. However, page 27 does not illustrate another database storing textual phrases related to the questions. The presence of one database (a database of questions) does not imply the presence of another database (a database of textual phrases). None of the reports illustrated or discussed in the Brown reference including anything other than the responses and a graph of data, as described in detail above. Thus, there is no reason to believe that a database of textual phrases is inherently present in the Brown reference, nor that such a database is being searched in the Brown reference.

Applicants respectfully assert that the Examiner has failed to establish a prima facie case of obviousness, because none of the cited references disclose "when the answer satisfies the condition, search[ing] a datastore accessible by the remote computer for textual phrases that match the question and automatically generate a clinical note containing the textual phrases for review by the health care professional" as recited in Applicants' claim 1. As discussed above, Brown does not disclose this element as asserted by the Examiner. Applicants request reconsideration and allowance of claim 1.

Regarding Applicants' claim 31, the Examiner asserts that Luttrell should be "considered in its entirety . . . as a whole," but, even when taking into account the entire reference, Luttrell does not disclose data entry after receiving the patient's responses and before alerting the health care professional. Applicants respectfully assert that even when taken as a whole Luttrell could not be modified as suggested by the Examiner without rendering Luttrell inoperable for its

16

intended purpose. Paragraph 27 of Luttrell pointed out by the Examiner discloses a health care professional entering data before treatment of the patient. Again, this differs from the claimed "automatic" creation of a treatment entry before a health care professional is alerted. Applicants respectfully request reconsideration and allowance of claim 31.

B.   Claims 1 and 3-10

The Office Action rejects claims 1 and 3-10 under 35 U.S.C. § 103(a) as being unpatentable over Iliff, U.S. Patent No. 5,594,638 (hereinafter "Iliff") in view of Ohayon et al., U.S. Patent No. 4,712,562 (hereinafter "Ohayon"), further in view of Brown, U.S. Publication Number 2003/0069753 (hereinafter "Brown"). For the reasons stated below, Applicants respectfully traverse the rejections of claim 1 and 3-10 under 35 U.S.C. § 103(a) over Iliff in view of Ohayon and in further view of Brown.

All elements in a claim must be accounted for to establish a *prima facie* case of obviousness. The prior art cited by the Examiner fails to disclose each element of Applicants' claim 1. For example, claim 1 recites that "when the answer satisfies the condition, search a datastore accessible by the remote computer for textual phrases that match the question and automatically generate a clinical note containing the textual phrases for review by the health care professional." The Examiner concedes that this element is found in neither Iliff nor Ohayon. The Examiner attempts to resolve the deficiency of the combination of Iliff and Ohayon with Brown. However, Brown does not disclose that "when the answer satisfies the condition, search a datastore accessible by the remote computer for textual phrases that match the question and automatically generate a clinical note containing the textual phrases for review by the health care professional" as recited in Applicants' claim 1.

The Examiner cites Figure 5 and Appendix D (page 61) of Brown as disclosing "searching a datastore accessible by the remote computer for textual phrases that match the question" as recited by Applicants' claim 1. Figure 5 is merely a script entry screen for input possible questions and answers is a survey. *See* Brown, paragraphs 54, 107, and 108. Appendix D is a disclosure of an "Alternate User Interface Design" wherein "each button is equivalent to a tab" and selection of the buttons "changes the content view underneath the button control area."

17

See Brown, Appendix D on page 61. Applicants can locate no relevant disclosure in Figure 5 or page 61 to the recitation in Applicants' claim 1 of "searching a datastore accessible by the remote computer for textual phrases that match the question."

The Examiner cites Figure 2 and paragraphs 41, 44, 105, and 115 of Brown as disclosing "automatically generat[ing] a clinical note containing the textual phrases for review by the health care professional" as recited in Applicants' claim 1. Brown does not disclose generating a clinical note containing textual phrases for the health care professional's review as stated by the Examiner. According to Applicants' claim 1 the textual phrases placed in the clinical note are retrieved from a datastore accessible by the remote computer that match the question. In Brown, no searching for textual phrases occurs. Instead, Brown discloses that the"[p]atient report includes a graph of device measurements received from the patient, as well as a listing of response received from the patient." *See* Brown, paragraph 105. The patient report of Brown is different from the clinical note recited in Applicants' claim 1 because the patient report is only a recitation of received responses and measurements whereas the clinical note contains textual phrases matching received responses from the patient obtained from searching a datastore.

Applicants note that the Examiner responded to Applicants' previous argument by stating that Brown, not Ohayon, was cited for the feature of searching a database for textual phrases that match the question and automatically generate a clinical note containing the textual phrases. However, as described above, Brown does not disclose this limitation recited in Applicants' claim 1.

In determining obviousness, an Examiner is required to consider every claim feature. M.P.E.P. § 2143.03. To reject a claim under 35 U.S.C. § 103 each and every claim feature must be accounted for in the prior art combination. *In re Royka*, 490 F.2d 981 (CCPA 1974). Because neither Iliff nor Ohayon nor Brown disclose all of the limitations of Applicants' claim 1 no *prima facie* case of obviousness exists. As such, claim 1 is allowable over the prior art of record. Claims 3-10 are dependent on allowable claim 1 and are allowable for at least the same reasons. Applicants respectfully request reconsideration and withdrawal of the rejection.

18

C.   Claims 31 and 33-40

The Office Action rejects claims 31 and 33-40 under 35 U.S.C. § 103(a) as being

unpatentable over Iliff, U.S. Patent No. 5,594,638 (hereinafter "Iliff") in view of Ohayon et al.,

U.S. Patent No. 4,712,562 (hereinafter "Ohayon"), in view of Brown, U.S. Publication Number

2003/0069753 (hereinafter "Brown"), further in view of Luttrell, U.S. Patent No. 4,712,562

(hereinafter "Luttrell"). For the reasons stated below, Applicants respectfully traverse the

rejections of claim 31 and 33-40 under 35 U.S.C. § 103(a) over Iliff in view of Ohayon, in view

of Brown, in further view of Luttrell.

Applicants note that in response to Applicants' previous argument the Examiner has

conceded that the combination of Iliff, Ohayon, and Brown do not disclose all of the recited

elements in Applicants' claim 31. In particular, neither Iliff, Ohayon, nor Brown disclose

"automatically creat[ing], in response to determining that the person should have health care

professional attention, an entry in an intervention data field for the person, the entry describing a

treatment to counteract a symptom experienced by the person" as recited in Applicants' claim 1.

The Examiner has attempted to cure the deficiency of the combination of Iliff, Ohayon, and

Brown with Luttrell. However, Luttrell does not disclose this element. Moreover, Luttrell

teaches away from Applicants' claim 1.

Luttrell discloses logging treatments performed on a patient by a health care professional,

which is not the same entry automatically created by the Applicants' claim 31 in response to

determining that the person should have health care professional attention. Luttrell discloses that

"[a]s a result of each treatment session, each identified goal (whether generated at this treatment

session or as a result of a prior session) will have a Treatment Record 96A-96C generated

therefor." Luttrell, paragraph 58. In contrast, the intervention automatically created as recited in

Applicants' claim 31 occurs "in response to determining that the person should have health care

professional attention." Thus, the intervention is logged before the health care professional is

contacted. In Luttrell, the logging occurs after the health care professional performs treatment,

which is after the health care professional is notified. Luttrell does not disclose "automatically

creat[ing], in response to determining that the person should have health care professional

19

attention, an entry in an intervention data field for the person, the entry describing a treatment to counteract a symptom experienced by the person" as recited in Applicants' claim 31.

Moreover, Luttrell teaches away from Applicants' claim 31 because Luttrell is directed to creating records after treatment has occurred. The automatic logging of treatments in Luttrell is for the purpose of "automatically generating reports requested by a multitude of separate payors from whom payment is eventually sought by the provider once treatment has been rendered." *See* Luttrell, paragraph 58. In contrast, Applicants' claim 31, as described above, is directed to identifying when health care professionals should be alerted. Luttrell cannot be adapted to log entries before health care professionals are alerted because it would render Luttrell inoperable for creating reports requesting payment for services already performed. Where a modification would render the device inoperable for its intended purpose there is no suggestion or reason to modify a prior art reference. *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984). There is no suggestion or reason to modify Luttrell as suggested by the Examiner because the modification would render Luttrell inoperable for is intended purpose. Thus, the combination of Luttrell with Iliff, Ohayon, and Brown is improper.

For at least the reasons described above claim 31 is allowable over the prior art of record. Claims 33-40 are dependent on allowable claim 31 and are allowable for at least the same reasons. Applicants respectfully request reconsideration and withdrawal of the rejection.

CONCLUSION

In view of the foregoing remarks, Applicants respectfully submit that the claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Additionally, the Commissioner is hereby authorized to charge any additional fees as set forth in 38 CFR §§ 1.16 to 1.18 which may be required for entry of these papers or to credit any

overpayment to Deposit Account No. 50-1212, under Order No. CARD.P0006US from which

the undersigned is authorized to draw.

Dated: November 28, 2011   Respectfully submitted,

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